

purchase of that part of the Material Facilities and Operations and Ancillary Facilities and Operations as to which all conditions precedent have been satisfied. Such consummation shall occur within five (5) business days after satisfaction of the conditions precedent with respect to such Material Facilities and Operations and Ancillary Facilities and Operations (the "Second Closing Date"); provided that the Second Closing Date shall not occur later than March 31, 2003 (or August 31, 2003 if the FTC or DOJ has made a Second Request in response to the HSR Act filings made by Seller and Buyer) except as noted below. The second Closing shall be conducted in accordance with and subject to Article 4 of this Agreement, without regard to whether all conditions precedent with respect to other Material Facilities and Operations and other Ancillary Facilities and Operations are at such time satisfied. By written notice to Seller, Buyer shall have the right to extend the Second Closing Date to a date which is no later than one hundred twenty (120) days after the originally scheduled Second Closing Date described above in this Section 9.8(b)(i);

(ii) **Subsequent Closings.** Subject to the prior consummation of the purchase by Buyer of the Core Facilities and Operations at the Closing contemplated by Section 9.8(a) of this Agreement and the closing of a portion of the Material Facilities and Operations and Ancillary Facilities Operations at the Second Closing contemplated by Section 9.8(b)(i), Buyer shall be obligated to consummate the purchase of that portion of the remaining Material Facilities and Operations and Ancillary Facilities and Operations on one or more dates following the Second Closing Date (the "Subsequent Closing Date(s)") as to which all conditions precedent have been satisfied as of the applicable Subsequent Closing Date. Such consummation shall occur within five (5) business days after satisfaction of the conditions precedent with respect to the applicable facilities and operations; provided that the Subsequent Closing Date shall not occur later than March 31, 2003 (or August 31, 2003 if the FTC or DOJ has made a Second Request in response to the HSR Act filings made by Seller and Buyer) except as noted below. The subsequent Closings, if any, shall be conducted in accordance with and subject to Article 4 of this Agreement, without regard to whether all conditions precedent with respect to the remaining Material Facilities and Operations and remaining Ancillary Facilities and Operations are at such time satisfied. By written notice to Seller, Buyer shall have the right to extend any Subsequent Closing Date to a date which is no later than one hundred twenty (120) days after the originally scheduled Subsequent Closing Date described above in this Section 9.8(b)(ii);

(c) Effective as of March 31, 2003 (August 31, 2003 if the FTC or Justice Department (as applicable) has made a Second Request in response to the HSR Act filings made by Seller and Buyer), this Agreement shall terminate as to the purchase by Buyer of any Material Facilities and Operations and Ancillary Facilities and Operations as to which no Closing has occurred as contemplated by Section 9.8(b) and, accordingly, on and after March 31, 2003 (or August 31, 2003 if the FTC or Justice Department (as applicable) has made a Second Request in response to the HSR Act filings made by Seller and Buyer), Buyer shall no longer be obligated to consummate the purchase of any such Material Facilities and Operations and Ancillary Facilities and Operations.

9.9 Material Adverse Effect in Certain Events. If the FTC or the Justice Department makes a Second Request in response to the HSR Act filing of Seller or Buyer and if by March 31, 2003, the FTC or Justice Department (as applicable) has not indicated that the Closing may proceed without challenge by the FTC or Justice Department (as applicable), then Buyer's

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obligation to Close commencing on and after April 1, 2003 will be subject to there not having occurred, from and after November 22, 2002, any fact, matter, change, circumstance or effect that has had or would reasonably be expected to have a Material Adverse Effect with respect to Seller.

9.10 Specified Matters. Buyer's obligation to close shall be conditioned upon Buyer being satisfied, in its sole and absolute discretion, either (i) that there are no Specified Matters, or (ii) that any Specified Matters identified by Buyer have been resolved in a manner satisfactory to Buyer, in its sole and absolute discretion. Buyer may waive the provisions of this Section 9.10 in whole or in part, in Buyer's sole and absolute discretion.

9.11 Third Party Consents. Buyer shall have received consents to the assignment of the contracts set forth on Schedule 9.11 hereto, in form and substance reasonably acceptable to Buyer.

10. CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER.

The obligations of Seller hereunder are, at the option of Seller, subject to the satisfaction, on or prior to the Closing Date, of the following conditions unless waived in writing by Seller:

10.1 Merger of System Entities with Seller. The System Entities listed on Schedule One other than Acquired Entities shall have merged into Seller with Seller as the surviving corporation and Seller shall have received a Certificate or Certificates of Merger from the Secretary of State of Missouri and the Secretary of State of Kansas to that effect; provided that this condition shall be deemed waived by Seller effective at the close of business on February 28, 2003. Seller will use commercially reasonable efforts to cause this condition to be satisfied as soon as practicable.

10.2 Opinion of Buyer's Counsel. Seller shall have received from counsel to Buyer an opinion dated as of the Closing Date and addressed to Seller, in form and substance reasonably satisfactory to Seller, to the effect that: (i) Buyer is a limited liability company duly organized and validly existing in good standing under the laws of the state of its organization; (ii) Buyer has full power and authority to make, execute, deliver and perform this Agreement, and all proceedings required to be taken by Buyer to authorize the execution and performance of this Agreement, and to purchase and receive the Purchased Assets as herein contemplated have all been duly and properly taken; and (iii) this Agreement constitutes the valid and binding obligation of Buyer, enforceable in accordance with its terms. Such opinion shall contain usual and customary qualifications. In rendering such opinion, such counsel may rely upon certificates of governmental officials and may place reasonable reliance upon certificates of officers of Buyer.

10.3 Action/Proceeding. No court or any other Governmental Entity shall have issued an order restraining or prohibiting the transactions herein contemplated; and no Governmental Entity shall have commenced or threatened in writing to commence any action or suit before any court of competent jurisdiction or other Governmental Entity that seeks to restrain or prohibit the consummation of the transactions contemplated or otherwise seeks a remedy which would materially and adversely affect the ability of Buyer to enjoy the full use and enjoyment of the

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Purchased Assets; and neither the Justice Department nor the FTC nor any state Attorney General shall have requested, orally or in writing, that Seller delay or postpone the Closing (it being understood that the parties will continue to be obligated to comply with their commitments under Section 8.8 unless and until the Closing occurs or this Agreement is terminated).

10.4 Pre-Closing Confirmations. Seller shall have obtained documentation or other evidence reasonably satisfactory to Seller that Seller has:

(a) received approval from all Governmental Entities whose approval is required to consummate the transactions herein contemplated, except for any such approvals the failure to obtain would not reasonably be expected to have a Material Adverse Effect;

(b) complied with all waiting periods under the HSR Act; and

(c) obtained a private letter ruling from the IRS ruling that consummation of transactions hereunder: (i) will not result in private inurement or private benefit; (ii) will not result in the payment by Seller of any unrelated business income tax, except with respect to (x) tax attributable to items described in Section 512(b)(5)(A) or (B) of the Code and (y) any debt-financed property, within the meaning of Section 514 of the Code; (iii) will not cause the inclusion of any interest paid to bondholders of Seller in the gross income for income tax purposes of such bondholders; and (iv) that Seller will continue to qualify post-closing as an entity described in Section 501(c)(3) of the Code. Buyer has the right to terminate this Agreement under Section 12.1(a)(iii) if this condition is not satisfied or waived by Seller by later of: (i) February 28, 2003 or (ii) five business days after satisfaction of the conditions in Section 10.4(a) and 10.4(b). Seller shall use commercially reasonable efforts to cause this condition to be satisfied as soon as practicable.

11. TRANSITIONAL ARRANGEMENTS.

11.1 Operational Transition. To establish and value accounts receivable included in Net Working Capital in the Closing Date Balance Sheet for services rendered and medicine, drugs, and supplies provided by Seller or by System Entities on or before the Closing Date (the "Transition Services") with respect to patients admitted to a Facility on or before the Closing Date but from whom payment has not been received (such patients being referred to herein as the "Transition Patients"), the parties shall take the following actions:

(a) **Medicare, Medicaid, TRICARE and Other Prospective Payment System Transition.** As soon as practicable after the Closing Date, Seller shall deliver to Buyer a statement itemizing the Transition Services provided by Seller or by System Entities on or through the Closing Date. Net Working Capital on the Closing Balance Sheet shall include an amount equal to the total prospective payment system ("PPS") payments, including outlier payments, capital and other pass through payments (before deposits and deductibles/copayments) per the remittance advice received by Buyer (or Seller and the System Entities) on behalf of a PPS Transition Patient, multiplied by a fraction, the numerator of which shall be the total charges for the Transition Services provided to such PPS Transition Patient by Seller or by System Entities and the denominator of which shall be the sum of the total charges for the Transition

Services provided to such Transition Patient both prior to and after the Closing Date (such amount, the "PPS Transition Payment"), except where the Seller and/or System Entities received a deposit or deductible/copayment prior to the Closing Date the payment to the Seller and/or System Entities will be the PPS Transition Payment minus such deposit or deductible/copayment made by such PPS Transition Patient to Seller and/or System Entities. Such itemization shall be provided to Seller within sixty (60) days after Closing, accompanied by copies of remittances and other supporting documentation as reasonably required by Seller. In the event that Buyer and Seller are unable to agree on the amount to be included in Net Working Capital under this Section 11.1(a), then such amount shall be determined by an accounting firm mutually acceptable to Buyer and Seller at their joint expense.

(b) Medicare, Medicaid, TRICARE and Other Cost-Based Transition with Cut-Off Claims. With respect to Medicare, Medicaid, TRICARE and other cost-based transition patients (the "Straddle Patients"), Seller shall prepare cut-off claims as of the Closing for all Straddle Patients in the Facilities. The valuation to be used in the Net Working Capital on the Closing Date Balance Sheet for the Straddle Patient receivables shall be based upon payments received or expected to be received by Buyer after the Closing with respect to medical services rendered to such Straddle Patients on or prior to the Closing, including any periodic interim payments or portions thereof applicable to the period on or prior to the Closing.

(c) Medicare, Medicaid, TriCare and Other Cost-Based Transition without Cut-Off Claims. With respect to Straddle Patients where cut-off billings cannot be done at the time of Closing, the Net Working Capital on the Closing Date Balance Sheet shall be valued as the amount equal to the payments actually received or to be received by Buyer multiplied by a fraction, the numerator of which shall be the total number of days prior to Closing for which Seller or a System Entity has provided Transition Services to such Straddle Patient, and the denominator of which shall be the total number of days with respect to such patient's stay at a Facility both before and after the Closing.

(d) PIP Payments. Each of the Facilities that participates in the Medicare program is reimbursed on an interim basis under the Medicare program on a periodic interim payment ("PIP") basis. If Seller or any of System Entities receives a PIP payment from the Medicare program associated with the operations of any of the Facilities relating to the period prior to the Closing, the Parties shall value such amounts applicable to the period prior to the Closing as part of the Net Working Capital on the Closing Date Balance Sheet after the Closing as an amount equal to the PIP payment(s) actually received by Seller and the System Entities for such period multiplied by a fraction, the numerator of which shall be the total number of days prior to the Closing and the denominator of which shall be the total number of days attributable to such PIP payment(s).

(e) Collection Agent; Lock Box; Assignment of Lock Box Proceeds to Buyer. Seller hereby appoints Buyer, and Buyer agrees to act, as Seller's and the System Entities' collection agent with respect to the Government Patient Receivables relating to the Transition Services to Transition Patients. In connection therewith, on or before the Closing, Buyer shall establish a "lock box" at a financial institution selected by Seller and reasonably acceptable to Buyer, and after the Closing shall deposit in such lock box cash, checks, drafts or similar items of payment allocable (pursuant to the procedures set forth in Sections 11.1(a)-(d) above) to

Seller's Government Patient Receivables. Seller hereby assigns all such amounts deposited by Buyer, as collection agent, into the lock box to Buyer in full satisfaction of Seller's obligation pursuant to Section 2.1(xii) hereof to transfer to Buyer an amount equal to the value of Seller's Government Patient Receivables arising from the rendering by Seller of Transition Services up to the Closing.

11.2 PreClosing Cost Reports.

(a) Buyer will prepare all cost reports relating to Seller and the System Entities for periods ending on or prior to the Closing Date or required as a result of the consummation of the transactions set forth herein, including terminating cost reports for the Medicare, Medicaid and TRICARE programs (the "PreClosing Cost Reports"). Seller shall forward to Buyer any and all correspondence relating to PreClosing Cost Reports within three (3) business days after receipt by Seller. Seller shall remit to Buyer any receipts of funds relating to PreClosing Cost Reports promptly after receipt by Seller and shall forward to Buyer any demand for payments within three (3) business days after receipt by Seller. Buyer shall acquire all rights to Agency Settlements and to PreClosing Cost Reports including any amounts receivable or payable in respect of such reports or reserves relating to such reports. Such rights shall include the right to appeal any Medicare, Medicaid and TRICARE determinations relating to Agency Settlements and PreClosing Cost Reports. Buyer shall retain the originals of PreClosing Cost Reports, correspondence, work papers and other documents relating to PreClosing Cost Reports and the Agency Settlements.

(b) Seller agrees to reasonably cooperate with Buyer in connection with any dispute, inquiry, investigation or other claim arising with respect to the PreClosing Cost Reports. Such cooperation shall include the preparation by Seller of any document or other material which may be required by any Governmental Entity in connection therewith.

(c) After the Closing, Seller shall remit to Buyer, promptly after receipt, any funds received by Seller which pursuant to the terms of this Agreement are among the Purchased Assets, including (a) accounts receivable (whether governmental, third party payor or private pay) and (b) receipts on account of the provision of patient care by the Facilities (whether before or after Closing).

11.3 Employees.

(a) As of the Closing Date, Seller and System Entities shall terminate all Employees of Seller and System Entities, and Buyer shall offer employment to all such Employees on terms and conditions of employment established by Buyer, which terms and conditions will include wage and salary levels at least equal to those paid by Seller to the Employees as of the day before Closing. Notwithstanding the preceding sentence, with respect to employees of Seller and System Entities who have written employment agreements, at the Closing, Seller will assign to Buyer and Buyer will assume and agree to perform such written employment agreements that are not Excluded Contracts, subject to (i) such changes in employee benefits as are necessary to convert such employees to Buyer's standard employee benefits for employees in comparable positions and (ii) termination of provisions in such agreements relating to Employee Benefit Plans that will not be assumed by Buyer and other employee benefits Buyer

does not provide to employees in comparable positions (other than severance benefits to the extent provided in the last paragraph of Section 11.3(a)). As a condition to Buyer's assumption of any employment agreements, Seller shall obtain fully executed amendments to such written employment agreements prior to Closing that make the changes described above, and any such employment agreement as to which a such an amendment is not received shall be deemed an Excluded Contract; provided that Buyer shall be responsible for any severance payable to any employee of Seller in accordance with the applicable written employment agreement even if the employment agreement is deemed an Excluded Contract in accordance with this sentence. Buyer is not obligated to offer employment to any person whose employment agreement is an Excluded Contract. The term "Employee" as used in this Agreement means an employee of Seller or any System Entity who accepts employment with Buyer, or who becomes an employee of Buyer through the assignment of his or her employment agreement to Buyer, as of the Closing Date (it being understood that employees at any Affected Facilities (unless later transferred to Buyer), Retained Facilities and Operations or primarily involved with other Excluded Assets shall not be considered "Employees"). All Employees will be retained as employees-at-will (except to the extent that such Employees are parties to contracts with Seller that are assumed by Buyer providing for other employment terms, in which case such Employees shall be retained in accordance with the terms of such contracts subject to the employee benefit adjustments described in clauses (i) and (ii) above regarding employee benefits) and shall be provided with the same conditions of employment and standard employee benefits as Buyer provides its existing employees in comparable positions. Buyer shall recognize the existing seniority of Employees for employee benefits purposes and shall provide credit for eligibility and vesting purposes for all such Employees' periods of service with Seller and with System Entities as provided under the similar ERISA and non-ERISA plans of Seller and each System Entity for purposes of any Buyer employee benefit plan or program, including all qualified and non-qualified retirement or savings programs, vacation, sick leave, holiday and severance benefits; provided that hours of service, not years of service, may be credited for the year of the Closing; and provided further that, with respect to the 401(k) plan and retirement plan applicable to employees of Buyer, Buyer shall recognize the existing seniority of Employees and provide credit for eligibility and vesting purposes for all such Employees' periods of service with Seller and with System Entities, in the manner provided for in the Retirement Reserve Plan and, under Buyer's retirement plan, shall count such service for purposes of determining the level of contributions. All existing benefit plans of Buyer and any future plans created by Buyer that provide for eligibility and vesting service to Buyer employees from their original date of hire shall (to the extent permitted by applicable Law) include all vesting and eligibility service credit as would be included by recognizing such Employees' original date of hire as recognized by Seller and/or System Entities. The service credited under the Buyer welfare and other benefit plans will include all service credited under the similar welfare and other benefit plans of Seller and each System Entity, respectively. Deductibles, co-payments, out-of-pocket costs, and similar amounts met and applied under System medical plans during the year in which Closing occurs shall be applied to any Buyer medical plans following the Closing Date and during the remainder of the calendar year, unless the Closing Date occurs on the last day of the calendar year. To the extent practicable, and subject to any limitations under Buyer's cafeteria plan, Employees who have elected to participate in health flexible spending arrangements ("FSA") under any cafeteria plan (described in Section 125 of the Code) maintained by Seller or a System Entity shall be entitled to continue that benefit without interruption under similar arrangements currently

provided by Buyer, with at least the same level of coverage, after becoming employees of Buyer during the remainder of that calendar year, unless the Closing Date occurs on the last day of the calendar year. Unless the Closing Date occurs on the last day of the calendar year and provided Seller's FSA or FSAs are maintained on a calendar year basis, Seller shall transfer to Buyer or Buyer's VEBA, as determined in Buyer's sole discretion, the difference (if any) between (i) the total amount of FSA salary reduction contributions withheld from Employees through the Closing Date for the calendar year in which the Closing Date occurs and (ii) the amount of FSA claims that have been paid with respect to Employees through the Closing Date for the calendar year in which the Closing Date occurs. (Seller shall not transfer any FSA assets, nor shall Buyer assume liability for any FSA claims, that related to a calendar year that precedes the calendar year in which the Closing occurs.) Participation in Buyer's employee benefit plans shall begin as soon as administratively feasible after the Closing Date for participating Employees (and eligible dependents) and for all other Employees who, using their System service as Buyer service, have met the age and service requirements for participation under such plans; provided that Buyer and Seller shall reasonably agree on an approach that, consistent with applicable law, protects all participating Employees (and their eligible dependents) from any gap in coverage under plans providing group medical, group dental, group life insurance, group dependent life insurance, and group long term disability benefits, with Buyer paying any employer premiums required to provide coverage during this period. Buyer will, to the extent lawful, count toward satisfaction by Employees and their dependents of any eligibility, waiting period or pre-existing condition limitation period under any of Buyer's employee welfare benefit plans all period of Employees' service with Seller or the System Entities, to the same extent that such service would have been counted for this purpose if performed for Buyer. Notwithstanding anything to the contrary in this Section 11.3, Buyer shall not assume any liability to Employees for the Excluded Liabilities.

Buyer will also assume and continue for the Employees the "Vacation Leave" and the "Sick Leave" benefits of Seller and the System Entities, which benefits will transfer to Buyer's responsibility at the Closing. For this purpose, "Vacation Leave" means: accrued paid time off ("PTO"); excess vacation hours; and with respect to union nurses at Lee's Summit Hospital, Medical Center of Independence and Menorah Medical Center, major holiday, personal holiday and vacation days. Further, "Sick Leave" means: extended sick leave; excess sick bank (i.e., sick leave inherited from HCA at Leased Triad Facilities in excess of HM benefits); and with respect to the union nurses at Lee's Summit Hospital, Medical Center of Independence and Menorah Medical Center, sick pay. The Vacation Leave is accrued by Seller on its financial statements in Net Working Capital. The Sick Leave is not normally accrued by Seller on its financial statements; therefore, the Purchase Price will be reduced by an agreed amount to reflect Buyer's assumption of this responsibility.

Buyer shall employ a sufficient number of Employees at each Facility (other than Facilities that are Retained Facilities and Operations) for at least a 90-day period following the Closing Date so as not to constitute a "plant closing" or "mass layoff" (as those terms are used in the Worker Adjustment and Retraining Notification Act, 29 U.S. Stat. § 2101 *et. seq.*) with respect to any Facility. Buyer shall be liable and responsible for any notification required under such Act (or under any similar state or local Law) and shall indemnify Seller and each System Entity from any claims arising out of a breach of this covenant. In the event that any employee of Seller or of any System Entity who accepts Buyer's offer of employment at Closing is terminated by Buyer within twelve months following the Closing Date, Buyer agrees to pay such individual

severance benefits (other than long term disability benefits) not less than the severance benefits to which such individual would have been entitled under the employment agreement, severance policies, practices, programs or plans of the System in effect as of the Closing Date copies of which have been provided to Buyer. If such agreements, policies, practices, programs or plans do not require severance, then Buyer will provide to such employees the prior notice of termination required by such agreements, policies, practices, programs or plans of the System.

(b) Seller shall fully vest each employee in his or her employer contribution account balance under each defined contribution plan that is sponsored by Seller or any System Entity, and that is intended to meet the qualification requirements described in Code Section 401(a), 403(b), or 457(b), as of the date on which he or she becomes an Employee (defined as an employee of Seller or any System Entity who accepts employment with Buyer).

(c) From and after the Closing, Buyer will comply with Buyer's obligations, if any, under the National Labor Relations Act or otherwise, regarding collective bargaining agreement negotiations with any duly certified representatives of any of the Employees.

(d) For a period of three (3) years after the Closing, Buyer shall not without cause terminate the designation of the credit union associated with Seller as the credit union for employees at the Hospitals and shall continue payroll deduction and direct deposit contributions of employee compensation to their individual accounts at such credit union.

(e) No provision of this Agreement will create any third party beneficiary or other rights in any employee or former employee (including any beneficiary or dependent thereof) of Seller or any of its Affiliates in respect of continued employment (or resumed employment) with Buyer or any of its Affiliates and no provision of this Agreement will create any such rights in any such persons in respect of any benefits that may be provided, directly or indirectly, under any Employee Benefit Plan or any plan or arrangement which may be established by the Buyer or any of its Affiliates. No provision of this Agreement will constitute a limitation on rights to amend, modify or terminate after the Closing Date any such plans or arrangements of the Buyer or any of its Affiliates.

12. ADDITIONAL AGREEMENTS.

12.1 Termination Prior to Closing.

(a) Anything herein to the contrary notwithstanding, this Agreement and the transactions contemplated by this Agreement may be terminated at any time before the Closing as follows and in no other manner: (i) by mutual consent in writing of Buyer and Seller; (ii) by Seller or Buyer at any time after March 31, 2003 (August 31, 2003 if the FTC or Justice Department (as applicable) has made a Second Request in response to the HSR Act filings made by Seller and Buyer) if the Closing shall not have occurred by such date; provided, that the right to terminate this Agreement under this Section 12.1(a)(ii) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur by such date; (iii) by Buyer if the condition set forth in Section 10.4(c) has not been satisfied or waived by Seller by the later of (x) February 28, 2003 or (y) five business days after the satisfaction of the conditions set forth in Sections 10.4(a) and

10.4(b); (iv) by Buyer by written notice to Seller if any event occurs or condition exists which would render impossible the satisfaction of one or more conditions to the obligations of Buyer to consummate the transactions contemplated by this Agreement as set forth in **Article 9**; provided that Buyer (at Seller's option) will be required to consummate the transaction contemplated by this Agreement with respect to those Facilities and Purchased Assets for which the conditions of **Article 9** have been satisfied so long as such Facilities and Purchased Assets include the Core Facilities and Operations; and (v) by Seller by written notice to Buyer if any event occurs or condition exists which would render impossible the satisfaction of one or more conditions to the obligation of Seller to consummate the transactions contemplated by this Agreement as set forth in **Article 10**; provided that Buyer (at Seller's option) will be required to consummate the transaction contemplated by this Agreement with respect to those Facilities and Purchased Assets for which the conditions of **Article 10** have been satisfied so long as such Facilities and Purchased Assets include the Core Facilities and Operations.

(b) In the event that this Agreement shall be terminated pursuant to **Section 12.1(a)**, all further obligations of the parties under this Agreement shall terminate without further liability of any party to another; provided that the obligations of the parties contained in **Section 3.3**, **Section 3.4**, this **Section 12.1**, **Article 13** and **Article 14** shall survive any such termination and, in the event of a partial closing contemplated by **Section 12.1(a)** and **Section 9.8**, only the obligations of the parties with respect to the Facilities and Purchased Assets not required to be transferred to Buyer at the partial closing shall terminate and all obligations of the parties with respect to the Facilities and Purchased Assets required to be conveyed to Buyer at the partial closing shall survive any such partial termination.

12.2 Post-Closing Access to Information. Each party acknowledges that subsequent to the Closing, the other party may need access to information, documents or computer data in the control or possession of the other, and may need access to the Purchased Assets or the Facilities or Excluded Assets and Excluded Liabilities (as the case may be) for purposes of concluding the transactions contemplated herein and for audits, investigations, compliance with governmental requirements, regulations and requests, and the prosecution or defense of third party claims. Accordingly, each party agrees that, at the sole cost and expense of the other, it will make available to the other and its agents, independent auditors and/or Governmental Entities such documents and information as may be available relating to the Purchased Assets and Facilities in respect of periods prior to Closing and will permit the other to make copies of and remove such documents and information. Buyer hereby acknowledges that the operations described in Seller's Disclosure Schedule are currently under review by the Governmental Entities shown thereon and that Seller may need to access such information for purposes of responding to such review.

12.3 Preservation and Access to Records After the Closing. After the Closing, Buyer shall keep and preserve all medical records and other records of the Purchased Assets, including the Facilities, existing as of the Closing. Buyer acknowledges that as a result of entering into this Agreement, it and its authorized representatives will gain access to patient and other information which is subject to rules and regulations regarding confidentiality. Buyer shall abide by any such rules and regulations relating to the confidential information to which it acquires access. Buyer shall maintain the patient records held at each Facility or delivered to Buyer at Closing at the Facilities after Closing in accordance with applicable Law (including, if

applicable, Section 1861(v)(i)(I) of the Social Security Act (42 U.S.C. § 1395(V)(1)(i)), and requirements of relevant insurance carriers, all in a manner consistent with the maintenance of patient records generated at the Facilities after Closing. Upon reasonable notice, during normal business hours and upon Buyer's receipt of appropriate consents and authorizations, Buyer shall afford to representatives of Seller, including its counsel and accountants, full and complete access to, and the right to make copies of, the records transferred to Buyer at the Closing (including access to patient records in respect of patients treated by any System Entity at the Facilities). In addition, Seller shall be entitled to remove from the Facilities any such patient records, but only for purposes of pending litigation involving a patient to whom such records refer, as certified in writing prior to removal by counsel retained by Seller in connection with such litigation. Any patient records so removed from the Facilities shall be promptly returned to Buyer following its use by Seller.

12.4 Reproduction of Documents. This Agreement and all documents relating hereto, including (a) consents, waivers and modifications which may hereafter be executed, (b) the documents delivered at the Closing, and (c) financial statements, certificates and other information previously or hereafter furnished to Seller or to Buyer, may, subject to the provisions of Section 14.7(b) hereof, be reproduced by Seller and by Buyer by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process and Seller and Buyer may destroy any original documents so reproduced. Seller and Buyer agree and stipulate that any such reproduction shall be admissible in evidence as the original itself in any judicial, arbitral or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by Seller or Buyer in the regular course of business) and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

12.5 Cooperation on Tax Matters.

(a) **Allocation of Purchase Price.** The Purchase Price shall be allocated among the various classes of Purchased Assets in accordance with and as provided by Section 1060 of the Code. Prior to Closing, Buyer and Seller shall agree in writing to the amount of the Purchase Price to be allocated to the stock of LSII, MCII, and HMVG (the "Target Corporations"). Buyer and Seller shall agree to the allocation among the classes of assets described in Section 1060 of the Code no later than 60 days prior to the filing deadlines for tax returns that include the Closing Date. Buyer and Seller shall prepare and file all tax returns and other filings consistent with such allocations.

(b) **Termination of Existing Tax Sharing Agreements.** All tax sharing agreements, tax indemnification agreements and similar arrangements with respect to or involving the Acquired Entities, on the one hand, and Seller and any other Affiliates of Seller on the other hand, shall be terminated effective as of the Closing Date.

(c) **Payment of Taxes.**

(i) Seller shall prepare and file, or cause to be prepared and filed, all returns of or which include the Acquired Entities (including any amendments thereto) with respect to any taxable period ending at or prior to the Closing Date (a "Pre-Closing Period").

Notwithstanding anything to the contrary in this Agreement, Seller shall pay and shall indemnify and hold Buyer and the Acquired Entities harmless from and against any and all income taxes with respect to the Acquired Entities for a Pre-Closing Period, including, without limitation, (A) any taxes imposed on the Acquired Entities pursuant to Treasury Regulations Section 1.1502-6, (B) any tax which is determined by income or earned surplus attributable to a Pre-Closing Period, and (C) any income tax attributable to the consummation of the transactions contemplated in this Agreement, including, without limitation, any tax liability that might arise as a result of a valid election under §338(h)(10) or any similar provision under state or local law. Buyer shall prepare and file, or cause to be prepared and filed, all returns of or which include the Acquired Entities, and shall pay and shall indemnify and hold Seller harmless from and against all income taxes with respect thereto for all taxable periods other than a Pre-Closing Period, except to the extent provided in the preceding sentence and in the second sentence of paragraph (ii) below.

(ii) For purposes of the immediately preceding paragraph (i) and this paragraph (ii), if, for federal, state or local tax purposes, the taxable period of an Acquired Entity that includes the Closing Date does not terminate at the Closing Date (a "Straddle Period"), the parties hereto will, to the extent permitted by applicable Law, elect with the relevant Governmental Authority to treat a portion of any such Straddle Period as a short taxable period ending as of the Closing Date and such short taxable period shall be treated as a Pre-Closing Period for purposes of this Agreement. In any case where applicable Law does not permit such an election to be made then, for purposes of this Agreement, income taxes with respect to the Acquired Entities for the Straddle Period shall be allocated to the Pre-Closing Period using an interim closing-of-the-books method that complies with Treasury Regulations Section 1.1502-76(b)(2)(i) (assuming that such taxable period ended at the Closing Date) and treating such period as a Pre-Closing Period for purposes of this Agreement, except that exemptions, allowances or deductions that are calculated on an annual basis (such as the deduction for depreciation) shall be apportioned on a per-diem basis. In the case of any Straddle Period described in the preceding sentence, Buyer shall provide Seller and their authorized representatives with copies of the completed return for such period and a statement certifying the amount of taxes shown on such return that are chargeable to Seller (the "Tax Statement") at least 30 days prior to the due date for the filing of such return (including any extension thereof), and Seller and their authorized representatives shall have the right to review such return and Tax Statement prior to the filing of such return. Seller and Buyer agree to consult and resolve in good faith any issues arising as a result of the review of such return and Tax Statement by Seller or their authorized representatives and to mutually consent to the filing of such return. If the parties hereto are unable to resolve any dispute within ten business days prior to the due date for filing of the return in question (including any extension thereof), the parties shall jointly select one of the "Big Four" accounting firms and request such accounting firm to resolve any issue in dispute as promptly as possible. If such accounting firm is unable to make a determination with respect to any disputed issue prior to the due date (including extensions) for the filing of the return in question, Buyer and the Acquired Entities, as the case may be, may file such return without the consent of Seller, subject, however, to the obligation thereafter to file an amended return reflecting the final decision of the selected accounting firm (which decision shall be rendered prior to the expiration of the period during which an amended return may validly be filed with respect to the applicable taxable period). Seller shall promptly pay to Buyer an amount equal to the taxes shown on the tax statement as being chargeable to Seller pursuant to

this paragraph (ii). If Seller has disputed such amount, appropriate adjustments shall be made to the amount paid by Seller in order to reflect the decision of the accounting firm selected.

(d) Refunds and Tax Benefits.

(i) Buyer shall promptly pay to Seller any refund or credit (including any interest paid or credited with respect thereto) received by Buyer or members of the group of Buyer's Affiliates that file consolidated tax returns (such group, "Buyer's Affiliated Group") of income taxes (i) relating to any Pre-Closing Period or portions of Straddle Periods at or before the Closing Date or (ii) attributable to an amount paid by Seller under Section 12.5(c) hereof. Buyer shall, if Seller so request, cause the relevant Acquired Entity (or other relevant member of Buyer's Affiliated Group) to file for any refund or credit to which Seller believes it is entitled pursuant to this Section 12.5(d). Any Proceeding (as defined in Section 12.5(f)) with respect to such a claim shall be governed by the provisions of this Section 12.5, including the provisions of Section 12.5(e).

(ii) If Seller pays an amount pursuant to this Section 12.5, and the underlying adjustment resulting in the obligation of Seller results in an income tax benefit (including any refund, tax credit, or diminution in income tax liability, carry forward or carry-back, collectively, an "Income Tax Benefit") to Buyer or any Affiliate of Buyer (including any Acquired Entity or any other member of Buyer's Affiliated Group), then Buyer shall promptly pay to Seller the amount of such Income Tax Benefit, including allocable interest, when and to the extent such Tax Benefit and/or interest is used by Buyer.

(e) Cooperation.

(i) Seller, on the one hand, and Buyer and the Acquired Entities, on the other hand, agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance (including access to books and records) relating to the Acquired Entities as is reasonably necessary for the preparation of any return, claim for refund, audit or similar matter, or the prosecution or defense of any claim, suit or Proceeding relating to any proposed adjustment of taxes.

(ii) Except as otherwise provided in Section 12.5(c)(ii), if Seller and Buyer disagree as to the matters governed by this Section 12.5, Seller and Buyer shall promptly consult with each other in an effort to resolve such dispute. If any such disagreement cannot be resolved within 15 days after either party asserts in writing that such dispute cannot be resolved, Seller and Buyer shall jointly select a "Big Four" accounting firm to act as an arbitrator to resolve such disagreement. Such selected accounting firm's determination shall be binding and conclusive, and any expenses relating to the engagement of such accounting firm shall be shared equally by Seller and Buyer.

(f) Post-Closing Audits and Other Proceedings. In the case of any audit, examination or other proceeding ("Proceeding") with respect to taxes for which Seller is or may be liable pursuant to this Agreement, Buyer shall promptly inform Seller, and Buyer shall execute or cause to be executed powers of attorney or other documents necessary to enable Seller to take all actions desired by Seller with respect to such Proceeding to the extent such Proceeding

may affect the amount of taxes for which Seller is liable pursuant to this Agreement. Seller shall have the right to control any such Proceedings (including any Proceedings to initiate claims for refunds of or credits with respect to any taxes for which Seller is liable pursuant to this Agreement and that Seller believes are available), including the right to initiate any claim for refund or credit, file any amended return or take any other action that it deems appropriate with respect to such taxes (or refunds or credits). All costs and expenses incurred in connection with any such Proceeding shall be borne by Seller, and Buyer and the Acquired Entities shall be reimbursed by Seller for any and all reasonable direct costs and expenses incurred by them in connection with such Proceeding. Seller will not settle any Proceeding nor take any action in such proceeding which could adversely effect tax obligations of Buyer or Buyer's Affiliated Group for any period following the Closing Date without Buyer's prior written consent. In the event that Buyer's consent is withheld to a settlement of a Proceeding and such proposed settlement would have no effect on the tax obligations of Buyer or Buyer's Affiliated Group for any period following the Closing Date, Buyer will assume the control, costs and expenses of the Proceeding. If such Proceeding is ultimately resolved by payment of an amount in excess of the amount in the original settlement proposal (or receipt of a refund in an amount less than the amount in the original settlement proposal), Buyer will pay the amount of such excess (or shall pay Seller the amount of such refund shortfall). If such Proceeding is ultimately resolved by payment of an amount less than the amount of the original settlement proposal (or a refund or credit in an amount greater than the original settlement proposal), Seller will reimburse Buyer for their costs and expenses to the extent of such difference.

(g) New Elections. Seller will not make any new elections with respect to taxes or changes in current elections with respect to taxes that could adversely affect Buyer's taxes with respect to post-Closing periods without the prior written consent of Buyer.

(h) Section 338 Election. At Buyer's option, Seller and Buyer shall jointly make a valid election under Section 338(h)(10) in accordance with the Code with respect to any or all of the Target Corporations. Buyer and Seller agree to report the transfers of the shares of stock under this Agreement consistent with these Section 338 elections, and shall take no positions contrary thereto.

(i) Preparation of Forms. Buyer shall be responsible for the preparation and filing of all Section 338 forms in accordance with the Code and the terms of this Agreement. Seller shall execute and deliver to Buyer such documents or forms as are reasonably requested and are required by any tax Laws properly to complete the Section 338 forms, at least 20 days prior to the date such Section 338 forms are required to be filed.

(j) Allocation of Target Corporations Purchase Price. Buyer and Seller agree to allocate the Purchase Price attributable to the Target Corporations (as defined in Section 12.5(a)) among the assets of the Acquired Entities in accordance with Section 338 and the regulations thereunder. Buyer and Seller shall mutually agree on at least estimates of the foregoing amounts prior to Closing and shall agree on the final amounts prior to the applicable filing deadlines. Buyer and the Seller will include such mutually agreed upon amounts in all filings with respect to the Section 338 elections, including but not limited to Forms 8594 and 8023, in accordance with the Code. Such Forms 8594 and 8023, where applicable, will be duly executed by the appropriate parties at or prior to the applicable filing deadlines.

12.6 Non-Competition.

(a) Except as permitted in this Section 12.6, during the period commencing on the Closing Date and ending on the tenth anniversary of the Closing Date, Seller agrees that it shall not and shall cause each of its Affiliates and successors not to, directly or indirectly (including by making a donation or providing other financing), (i) engage in the construction or operation of any Competing Business within the Kansas City metropolitan statistical area or a radius of 10 miles of any Facility or (ii) acquire, lease, own or be a shareholder, partner, member or equity holder of, exercise management control over, provide consulting services for, or acquire or maintain any interest in, any Competing Business that is operated or conducted within the Kansas City metropolitan statistical area or a radius of 10 miles of any Facility.

(b) Seller recognizes that the covenants in this Section 12.6, and the territorial, time and other limitations with respect thereto, are reasonable and properly required for the adequate protection of the acquisition of the Purchased Assets by Buyer, and agrees that such limitations are reasonable with respect to its activities, business and public purpose. Seller agrees and acknowledges that the violation of the covenants or agreements in this Section 12.6 would cause irreparable injury to Buyer and that the remedy at law for any violation or threatened violation thereof would be inadequate and that, in addition to whatever other remedies may be available at law or in equity, Buyer shall be entitled to temporary and permanent injunctive or other equitable relief without the necessity of proving actual damages or posting bond. The parties hereto also waive any requirement of proving actual damages in connection with the obtaining of any such injunctive or other equitable relief.

(c) Nothing herein contained shall be deemed to prevent or limit the right of Seller (i) to continue the operation of any Facility which is not sold to Buyer in the event that Buyer Closes on less than all the Facilities and Purchased Assets under circumstances described in Section 9.8, provided that Seller may not use the name Health Midwest or any derivation thereof in connection therewith, (ii) to purchase, acquire, merge or consolidate with, by any means whatsoever, any Person (or the assets of any Person) that may have a Competing Business that violates the provisions of Section 12.6(a) so long as (x) such Competing Business constitutes less than 10% of such Person's operations, (y) the principal purpose of such purchase or acquisition was not to permit Seller to operate a Competing Business in the restricted areas and (z) Seller offers Buyer the opportunity to purchase the assets that constitute the Competing Business on substantially the same economic terms as Seller acquires such assets, (iii) to invest in the capital stock or other securities of any corporation or other entity whose stock or securities are publicly owned or are regularly traded on any national securities exchange; provided, however, that Seller shall not own more than three percent (3%) of the equity interests of any corporation or other entity engaged in the activities described at Section 12.6(a); (iv) to make donations or contributions either (x) for purposes and/or activities mutually agreed by Seller and Buyer and set forth on a Schedule 12.6(c); provided that, to the extent such purposes or activities may be used to favor or provide an advantage to the Competing Business of a third party as compared to Buyer, the operations of Buyer are not discriminated against or placed at a competitive disadvantage in connection with the activities set forth on Schedule 12.6(c), or (y) in an amount not to exceed \$250,000 per organization (and its affiliates) per year, to any organization which is exempt from federal income tax under Section 501(c)(3) of the Code, even if such organization operates a Competing Business within the restricted area; (v) to make

payments for or directly conduct or use health care programs, products, services, or property used in providing the same pursuant to exercise by Seller of the mutually agreed purposes set forth on **Schedule 12.6(c)**; provided that, to the extent such activities may be used to favor or provide an advantage to the Competing Business of a third party as compared to Buyer, the operations of Buyer are not discriminated against or placed at a competitive disadvantage in connection with the activities set forth on **Schedule 12.6(c)**, or (vi) continue to hold a passive equity or passive membership interest in any Joint Venture Entity if Seller is precluded by the terms of the applicable joint venture agreements and action of the other parties to the joint venture arrangement from transferring to Buyer Seller's or the applicable System Entity's interest in any such Joint Venture Entity. For purposes of **subsection (vi)**, a passive equity or membership interest shall mean that Seller is permitted only to receive distributions from the applicable Joint Venture Entity and is not permitted to participate in financing, further investment in, operations, management or governance of the Joint Venture Entity.

(d) It is the intention of each party hereto that the provisions of this **Section 12.6** shall be enforced to the fullest extent permissible under the laws and the public policies of the States of Missouri and Kansas and of any other jurisdiction in which enforcement may be sought, but that the unenforceability (or the modification to conform with such laws or public policies) of any provisions hereof shall not render unenforceable or impair the remainder of this Agreement. Accordingly, if any term or provision of this **Section 12.6** shall be determined to be illegal, invalid or unenforceable, either in whole or in part, this Agreement shall be deemed amended to delete or modify, as necessary, the offending provisions and to alter the balance of this Agreement in order to render the same valid and enforceable to the fullest extent permissible as aforesaid.

(e) For purposes of this **Section 12.6**, the term "Competing Business" means the business of owning, operating, managing or otherwise providing services through general acute care hospitals, psychiatric hospitals, specialty hospitals, specialty outpatient facilities, surgery centers, urgent care centers, imaging centers, physician practices, rehabilitation facilities, skilled nursing practices, home health operations and other businesses that provide health care of a kind now provided by Seller and/or its Affiliates.

This **Section 12.6** shall continue to apply to Seller and its successors and assigns, including if Seller is acquired by or merged with or into, or assigns any of its rights or obligations to, any other Person that owns or operates a Competing Business.

12.7 No Shop. Except for the sale of Inventory and other assets in the ordinary course, Seller agrees that, from the date hereof through the date of consummation or earlier termination of this Agreement, it shall not, and shall not permit any of its subsidiaries or employees or any investment banker, attorney, advisor or other representative of Seller to, directly or indirectly, (i) offer for sale or solicit offers to buy any of the Facilities or any part of the Purchased Assets, (ii) hold discussions or negotiate with, or provide information to, any Person (other than Buyer) with a view towards such an offer or solicitation or with a view towards a merger or consolidation of any entity owning the Purchased Assets, or (iii) enter into any agreement, arrangement or understanding with any such Person relating to the sale or other disposition of any of the Facilities or any part of the Purchased Assets.

12.8 Consented Assignment. Anything contained herein to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any Assumed Contract if an attempted assignment thereof without the consent of another party thereto would constitute a breach thereof or in any material way affect the rights of Seller thereunder, unless such consent is obtained. If such consent is not obtained, or if an attempted assignment would be ineffective or would materially affect Seller's rights thereunder so that Buyer would not in fact receive all such rights, Seller shall upon the request of Buyer cooperate in any reasonable arrangement designed to provide for Buyer the benefits under any such Assumed Contract, including enforcement of any and all rights of Seller against the other party or parties thereto arising out of the breach or cancellation by such other party or otherwise. At Buyer's request, any such Assumed Contract will be assigned to Buyer notwithstanding the failure to obtain any consent thereto. Neither the failure of a third party to consent to the assignment by an Affiliate of Seller and assumption by Buyer of a material Assumed Contract, nor the failure of Seller to provide the benefits of the contract pursuant to the immediately preceding sentence shall delay or prevent the Closing from occurring. At Buyer's request, with respect to any Assumed Contract that contains exclusivity or non-compete provisions, Seller shall work with Buyer to enter into such arrangements with Buyer that are reasonably acceptable so that the operations of Buyer's Affiliates are not impacted or impaired by such provisions.

12.9 Lease of Trinity Lutheran Space. Buyer or its designees shall have the right to lease or sublease from Seller such space as Buyer may reasonably request in the Trinity Lutheran North building, which is included in the Trinity Lutheran Assets. Any such lease will be on market terms and conditions and will provide either party the right to terminate on ninety (90) days notice.

12.10 Transition Services Agreement. In the event that the assets actually transferred and conveyed to Buyer are not sufficient in any respect to operate the System after the Closing, the parties will enter into a transition services agreement prior to the Closing pursuant to which Seller will provide such services to Buyer at Seller's cost.

12.11 Special Indemnity for Specified Matters. In addition to any obligations of Seller to indemnify and hold harmless Buyer Indemnified Parties from and against any and all Damages related to Specified Matters in accordance with Section 13.1(iii), for a period of two years after the Closing, Seller shall indemnify and hold harmless Buyer Indemnified Parties from and against any decrease in the value of the Purchased Assets and Assumed Liabilities resulting from the disclosure, investigation and resolution of, any Specified Matters, which decrease in value will reflect the economic detriment (including loss of revenue and business) to the Purchased Assets and Assumed Liabilities as well as any Damages sustained by Buyer. Any matter as to which a claim has been asserted that is pending and unresolved at the end of such two year period shall continue to be covered by this Section 12.11 until such matter is finally determined or otherwise resolved by the parties under this Agreement or by a court of competent jurisdiction and any amounts payable hereunder are finally determined and paid.

12.12 Cerner Deferral. Promptly upon receipt by Seller of any invoice from Cerner related to any Cerner Deferral (whether received from Cerner or any of its affiliates or Buyer), Seller shall notify Buyer in writing if Seller does not intend to pay any such amount.